

**SACRAMENTO POLICE DEPARTMENT
ADMINISTRATIVE PENALTY APPEAL HEARING
RECORD OF DECISION**

IN THE MATTER OF:

SPD REPORT #: 18-84166

APPELLANT: Jin Ruey Wu

VIOLATION ADDRESS: 7901 34th Avenue

SACRAMENTO CITY CODE SECTION(S): 8.132.040

PROPOSED ADMINISTRATIVE PENALTY: \$880,000

HEARING EXAMINER: Camille Dixon

HEARING DATE: September 20, 2018

This matter was heard at a noticed public hearing. The following witnesses submitted a written explanation, appeared and/or testified at the hearing on behalf of either the City or the Appellant as noted below. Any written materials submitted with the protest or at the hearing were reviewed by the Hearing Examiner and are on file in the offices of the City of Sacramento.

City Staff: Officer Jesus Trejo – Sacramento Police Department

Appellants: Jin Ruey Wu

Ernest Chen - Attorney for Appellant

Wei Zhong - Attorney for Appellant

TESTIMONY SUMMARY

City Staff:

Sacramento Police Department Officer Trejo testified that on March 02, 2018, the Sacramento Police Department received information regarding a possible illegal cultivation operation occurring at 7901 34th Avenue.

On March 21, 2018, the Sacramento Police Department executed a search warrant at 7901 34th Avenue on suspicion of an illegal cannabis cultivation. Officers located 1766 cannabis plants. Photos were taken at the scene.

Officer Trejo testified that he had requested Sacramento Municipal Utility District (SMUD) to look into the historic power usage of this property. SMUD provided Officer Trejo with power usage data going back to February of 2015. He also stated that the power usage for this property has been high month after month and consistent with indoor marijuana cultivation going back to February of 2015.

Pursuant to SCC 8.132.050 (E)(1), an administrative penalty in the amount of \$880,000 (i.e., \$500 per plant over six plants) was issued to the property owner for a violation of SCC 8.132.040(B). The citation was left inside the residence. The City Attorney also mailed a copy of the administrative penalty to the property owner. The administrative penalty in this case is appropriate due to the potentially high proceeds to be gained from the illegal cultivation of cannabis.

Deputy City Attorney:

Deputy City Attorney Parkhurst stated that a notice was sent to Mr. Wu informing him that the previous rental housing inspection of his property was denied by his tenant and that the new inspection was set for October 10, 2017. He also stated that the tenant denied and refused entry into the subject property for the inspections under the City's Rental Housing Inspection Program. Attorney Parkhurst also stated notice was sent that the property wasn't in compliance with this Sacramento City Code requirement.

Deputy City Attorney Parkhurst asked if Mr. Wu had a practice that when one tenant moves out and prior to another tenant moving in the property, is there an inspection of the property? In addition, he asked if Mr. Wu's tenants submit a security deposit.

He also noted that on the lease agreement the business address given by the property manager Tony Yung to where the payment was supposed to be submitted was 8030 Gerber Rd, Sacramento, CA. He stated that there are only two businesses at that address. The Fave's Deli and Starbucks.

Deputy City Attorney Mr. Parkhurst asked how and when Mr. Yung was retained by Mr. Wu as a property manager.

Appellant:

Wei Zhong, attorney for the property owner, testified that Jin Ruey Wu purchased this property as a rental investment in 2009. During all relevant time, Mr. Wu fully delegated management duties to property manager, Tony Yung. Attorney Wei Zhong testified that on the date of the alleged violation, the property was leased to tenant He Shen Qing and his family. A copy of the executed lease agreement with identification of the tenant was provided. Section 27, Additional Terms, of the lease agreement states specifically that illegal activities and growing of marijuana are strictly prohibited. Section 27 cautioning tenants against marijuana related

violations was added to the standard agreement after consultations with relevant professionals.

Attorney Wei Zhong stated that the property manager Tony Yung secured tenants, collected rent and maintained the property for Mr. Wu. The property manager was instructed to conduct frequent as well as an annual inspections. Attorney Wei Zhong also specified that during all relevant times the property is fully registered with the Sacramento Residential Rental Housing Inspection Program. Per Attorney Wei Zhong, the most recent property inspection was performed by the city personnel in December 2017.

Attorney Wei Zhong stated that the property at 7901 34th Avenue has been fixed and vacant. She also stated that Mr. Yung was previously working with a licensed agent who was responsible for the sale of property. The agent asked Mr. Wu if he wants someone to manage the property and the agent suggested Mr. Yung to manage the property. Attorney Wei Zhong stated that the property manager's address in the lease agreement is different than the actual address provided to Mr. Wu by the property manager.

Mr. Chen Lee asked Officer Trejo if the City of Sacramento and the Sacramento Police Department alleges that Mr. Wu was somehow actively involved in the property. Mr. Chen also inquired if Mr. Wu was directly notified with any kind of notice of abatements, letting him know there was an illegal marijuana grow occurring at this property.

Mr. Chen also inquired regarding a Government Code Section 53069.4, which states that it requires all local agencies to give a person reasonable notice of continued violations of an ordinance and given a reasonable period to remedy the violation before imposing the administrative penalty, was complied with.

FINDINGS OF FACT:

After examining the evidence submitted and arguments offered by City staff, the appellant and witness, if any; the owner's efforts, or lack thereof, to comply with the City Code; the staff time and costs incurred in investigating the violation; the extent, if any, to which the fine or penalty would impose a substantial economic hardship; the seriousness of the violation; the Hearing Examiner hereby makes the following findings:


- A. The Administrative Penalty was properly issued and served.
- B. The Appellant's attorneys' claim that prior notice of the illegal activity was required before a fine under the Government Code is not applicable because this was the first violation under SCC 8.132.040(B) and the state law applies to providing notice of a violation before imposing additional fines.
- C. The appellant's attorneys' claim that the property manager made all the decisions does not relieve the property owner of ensuring compliance with applicable City Codes. The property manager is the owner's agent and the owner is responsible if his agent fails to properly monitor and inspect the property to insure compliance with lease provisions that prohibited growing cannabis.
- D. The tenants at the property changed after the first tenant denied a Rental Housing inspection and it appears that no inspection of the premises has been conducted, which would have put the owner on notice of the property deficiencies and illegal cultivation.

DECISION:

The Administrative Penalty issued on May 9, 2018, in the amount of \$ 880,000 shall be upheld.

IT IS SO ORDERED:

Dated: September 26, 2018



Camille Dixon
Hearing Examiner

PAYMENT: ✓ Applicable ☐ Not Applicable

See enclosed invoice.

If the administrative penalty is not paid within the time specified, it may be made a personal obligation of the responsible party, and if applicable may also be made a lien against the property on which the violation occurred, and may be made a special assessment collected at the same time and in the same manner as ordinary secured property taxes are collected.

APPEAL

If you desire to seek judicial review of the Hearing Examiner's decision, you must file a petition for judicial review with the Sacramento County Superior Court no later than the 90th day following the date of this decision. (California Code of Civil Procedures Section 1094.5 & 1094.6)